

STATE OF MICHIGAN
COURT OF APPEALS

GAYLE ANN MACKIE,

Plaintiff-Appellant,

v

EDWARD ADAM MACKIE,

Defendant-Appellee.

UNPUBLISHED
October 10, 2000

No. 214758
Macomb Circuit Court
LC No. 93-001970-DO

Before: Cavanagh, P.J., and Saad and Meter, JJ.

PER CURIAM.

Plaintiff appeals as of right from that portion of the trial court's judgment of divorce dividing certain of the parties' marital assets. We affirm the equal division of defendant's pension, but remand for the trial court's equitable distribution of the benefits that accrued to his pension and the contributions and earnings of the stock savings plan after the date on which plaintiff filed for divorce.

First, plaintiff alleges that the trial court erred by valuing the defendant's retirement plan and stock plan as of the filing of her complaint, rather than as of the date the judgment of divorce was entered. We review a trial court's findings of fact with respect to its division of marital assets for clear error. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992). If we affirm the trial court's findings of fact, then we must decide whether the dispositional ruling was fair and equitable in light of those facts. *Id.* We will not reverse the trial court's disposition unless we are left with the firm conviction that the division was inequitable. *Id.*

When apportioning marital property, the trial court must strive for an equitable division of increases in marital assets that may have occurred between the beginning and the end of the marriage. *Reeves v Reeves*, 226 Mich App 490, 493; 575 NW2d 1 (1997). To reach an equitable division, the court should consider the duration of the marriage; the contribution of each party to the marital estate; each party's station in life, earning ability, age, health, needs, fault, or past misconduct; and any other equitable circumstances. *Sparks, supra* at 158-160. Assets earned by a spouse during the marriage, whether received during the existence of the marriage or after the judgment of divorce, are properly considered part of the marital estate. *Byington v Byington*, 224 Mich App 103, 110; 568 NW2d 141 (1997). Marriage is a status that legally terminates only upon the death of a spouse or upon entry of a

judgment of divorce. *Id.* at 109. The inquiry as to which assets comprise the marital estate is distinct from the question of the valuation of those assets. *Id.* at 114, n 4. Any right to vested pension benefits accrued by a party during the marriage must be considered part of the marital estate subject to award upon divorce. MCL 552.18(1); MSA 25.98(1); *Vander Veen v Vander Veen*, 229 Mich App 108, 110-111; 580 NW2d 924 (1998). Benefits from a pension for which benefits accrued both during and before or after the marriage should be allocated based on the ratio of the years the parties were married while the employed spouse earned his pension to the total years in which the employed spouse worked to accrue the pension. *Vander Veen, supra* at 112-115.

Insofar as the trial court considered the contributions to the stock savings investment plan and pension benefits accrued by defendant after plaintiff filed for divorce to be nonmarital assets, we are convinced that the trial court erred. By only awarding plaintiff a portion of defendant's pension benefits that accrued prior to plaintiff filing for divorce, the court erroneously implied that it considered the benefits that accrued after plaintiff filed for divorce to be defendant's separate asset. The court further erred in awarding defendant one hundred percent of the contributions to the stock savings investment plan after plaintiff filed her complaint without any explanation for the noncongruent division. While each spouse need not receive a mathematically equal share, a significant departure from congruence must be explained clearly by the court. *Byington, supra* at 114-115.

The parties' manifestation of intent to lead separate lives, such as by filing a complaint for divorce or maintaining separate homes, may be of great significance to the apportionment of the marital estate. *Id.* at 112. Any presumption of congruence that exists with respect to the distribution of marital assets becomes attenuated after such a manifestation and may result in the non-acquiring spouse being entitled to no share or a lesser share of the property in light of all the apportionment factors. *Id.* at 115-116. On remand, the trial court must make an equitable distribution of these marital assets in light of the *Sparks* factors; the court may find that plaintiff's extremely limited contribution to the acquisition of these marital assets after the parties' public manifestation of an intent to lead separate lives requires it to award her little or no interest in them. In making an equitable distribution of these assets, the court must also consider all the facts, including any comparative fault for the lengthy delay between the filing for divorce in 1993 and the entry of judgment in 1998, the court's prior disposition of the other marital assets, and defendant's fault in the breakdown of the marriage. See *id.* at 117.

Next, plaintiff argues that the trial court abused its discretion when it decided to award plaintiff only fifty percent of defendant's pension benefits after the court decided to award plaintiff sixty-five percent of the other marital assets. The decision to award plaintiff sixty-five percent of the other marital assets was based on defendant's physical abuse of plaintiff during the marriage and his fault in losing his lucrative position with General Motors Corporation that made it impossible for the trial court to award alimony to plaintiff where it otherwise would have made an award of alimony. As an initial matter, we agree with plaintiff that the trial court erred in finding that she failed to raise the issue of defendant's pension at trial. However, as the court made clear in its opinion, it based its decision to make an equal division of the pension on the facts and circumstances before it and not on plaintiff's alleged failure to raise the issue. At that time, defendant was unemployed while plaintiff was earning \$8 per hour. Plaintiff had been awarded the larger share of the parties' other assets. The court noted that if defendant were to receive only thirty-five percent of the \$2,000 per month pension, he would be left

with only \$700 per month; the court concluded that this would give plaintiff “a disproportionately high share of the marital funds and place defendant at a distinct financial disadvantage.” We find the court’s distribution of this asset to be fair and equitable under the circumstances.

The trial court’s division of the marital assets is affirmed in part and vacated with respect to the accrued pension benefits and stock savings investment plan contributions and earnings after May 7, 1993, and the matter is remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Mark J. Cavanagh
/s/ Henry William Saad
/s/ Patrick M. Meter